

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

JEREMIAH JAMES RIVERS,

Defendant and Appellant.

A153807

(San Francisco County
Super. Ct. No. SCN228243)

A jury found Jeremiah James Rivers guilty of battery. (Pen. Code, § 242.)¹ The trial court sentenced Rivers to 110 days in county jail. Rivers appeals. He argues the battery conviction may have been based on an “invalid theory” because, during closing arguments, the prosecutor argued the jury could convict Rivers of battery based on evidence he made contact with the victim’s headphones. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On October 8, 2017, at about 6:00 p.m., the victim was walking on the Embarcadero in San Francisco talking on his phone. The victim was a 38-year-old African American male. He was wearing over-the-ear headphones and he was talking to a friend using FaceTime.

A witness testified that Rivers went up to the victim, “grabbed the guy’s headphones and just smashed it into the ground.” The victim testified that Rivers hit him

¹ All undesignated statutory references are to the Penal Code.

on the right side of his head, thereby knocking his headphones off his head, and then Rivers picked up the headphones and slammed them to the ground. Rivers yelled racial epithets at the victim. The victim had not encountered Rivers prior to this incident.

The victim called the police. Police arrested Rivers, who was agitated, but cooperative. Rivers had a history of mental health issues; his medical case manager testified she facilitated his admission to psychiatric facilities on at least four occasions.

The prosecutor charged Rivers with one count of battery (§ 242) and it was alleged the offense was committed because of the victim's race (§ 422.7, subd. (a)). "A battery is any willful and unlawful use of force or violence upon the person of another." (§ 242.) In the jury instructions, the jury was told, in accordance with CALCRIM No. 960, that the People had to prove Rivers touched the victim in a harmful or offensive manner, and that "[t]he slightest touching can be enough to commit a battery if it is done in a rude or angry way. Making contact with another person, including through his or her clothing, is enough."

During closing arguments, the prosecutor argued that if Rivers "grabs headphones aggressively in a manner where his hand or even the headphones came into contact in a rough manner with [the victim's] head, that is a battery. The instruction is clear. He does not have to touch [the victim] skin to skin. And it would be one thing if he walked up and gently removed the headphones. That is not the fact here. We either have that he aggressively grabbed them, throwing them to the ground, or he hit him, knocking them off. Those are our options."

The jury found Rivers guilty of battery, but could not decide whether the special allegation was true. The court declared a mistrial on the special allegation. The court sentenced Rivers to a term in county jail of 110 days with credit for time served of 110 days.

DISCUSSION

On appeal, Rivers argues that "merely touching an object attached to a person is not sufficient to constitute a battery," and he contends the jury may have relied on this "invalid theory." In making this argument, Rivers relies upon the advisory committee

notes to the CALCRIM instruction, which state the committee “could not locate any authority on whether it is sufficient to commit a battery if the defendant touches something attached to or closely connected with the person. Thus, the committee has not included this principle in the instruction.”

The Attorney General responds that it is established law that “battery can be committed indirectly by touching an object closely connected to the victim.” In *In re B.L.* (2015) 239 Cal.App.4th 1491, addressing a matter of first impression, the Court of Appeal held a student committed battery when she knocked a walkie-talkie out of a teacher’s hand. (*Id.* at pp. 1495–1497.) Our colleagues in Division One noted that, in the tort context, “ ‘[t]he interest in the integrity of [the] person includes all those things which are in contact with or connected with the person,’ ” and that other commentators have applied this assessment to the criminal offense of battery. (*Id.* at p. 1496.) Similarly, in *People v. Dealba* (2015) 242 Cal.App.4th 1142, the court held a defendant committed spousal battery when he deliberately caused his car to collide with his estranged wife’s car. (*Id.* at pp. 1152–1153.)

Here, Rivers failed to file a reply brief, which we may deem a concession of the point. (*Campbell v. Ingram* (1918) 37 Cal.App. 728, 732 [“Since appellant has not deigned to reply to the argument of respondent, we have a right to assume that the former deems the argument of the latter unanswerable”].) We agree with the reasoning of *In re B.L.* and adopt it as our own. Accordingly, the prosecutor’s argument that Rivers committed a battery by forcefully grabbing the victim’s headphones was not based on an invalid theory.

DISPOSITION

The judgment is affirmed.

Jones, P.J.

WE CONCUR:

Needham, J.

Burns, J.

A153807